

JOSEPH J. HEATH
GENERAL COUNSEL FOR THE ONONDAGA NATION
ATTORNEY AT LAW
716 EAST WASHINGTON STREET
SUITE 104
SYRACUSE, NEW YORK 13210-1502
315-475-2559
Facsimile
315-475-2465
jheath@atsny.com

March 30, 2011

Robert Nunes
Remedial Project Manager
Central New York Remediation Project
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

**Re: Consultation regarding the U.S. EPA's Determination to Not Take
Superfund Action at Crouse Hinds Landfill and Mathews Avenue Landfill**

Dear Mr. Nunes:

As General Counsel to the Onondaga Nation, I am submitting these comments on the EPA's Determination to Not Take Superfund Action at two locations on or near Onondaga Lake. The Onondaga Nation is a federally recognized Indian Nation occupying the currently recognized Onondaga Nation Territory within Onondaga County, New York. The Nation is one of the Six Nations of the Haudenosaunee Confederacy and was one of the Nations with whom the United States sought peace and friendship in 1794 in the Treaty of Canandaigua. The EPA provided its draft Determination to the Nation pursuant to its consultation obligations with Indian Nations and we are providing these comment as part of that government-to-government relationship.

In 2009, the Nation raised substantive and procedural concerns regarding the EPA's decision not to take Superfund action at particular sites within the Onondaga Lake watershed and arguably tied to the Onondaga Lake Superfund site. Although we are pleased that the EPA has chosen to revise its Determination process and is providing notice and an opportunity for public comment, we continue to object to the substantive criteria used by EPA to make its determination.

The EPA's stated reliance on the presence of a current "pathway for Site-related contamination to migrate. . . to Onondaga Lake" is not grounded in regulation or law. Rather, as described in the HRS package, any determination to eliminate a site from remediation under Superfund should focus on the nexus between the site being reviewed and sites that are or could have been the basis for the Onondaga Lake Superfund site listing. Using this standard, the Mathews Avenue Landfill site must be included within the Onondaga Lake Superfund remediation, while the Crouse Hinds Landfill requires a more thorough assessment to determine whether its should be included as well.

1. Legal Standards

Although designated the Onondaga Lake Superfund Site, the site was not defined by or limited to impacts on the Lake. In issuing the final HRS scoring package, the EPA noted that Superfund sites are often defined in geographic terms related to the source of the waste, but that "[a]s a legal matter, the site is not coextensive with that area. . . . Rather, the site consists of all contaminated areas within the area used to define the site, and any other location to which contamination from that area has come to be located" (Onondaga Lake HRS Package, 1995, p. 1) (emphasis added). The fact that the EPA named this site for a geographic landmark in which much of the contamination came to be located rather than a contamination source does not change the legal effect of a site name. In keeping with the language of the HRS package, the Onondaga Lake Superfund site must include all sources of contamination to Onondaga Lake and any other location to which contamination from those sources has come to be located. Remedial action at any site meeting this definition should be taken as part of the federal Superfund action.

Under this definition, the Nation believes that the Mathews Avenue Landfill must be considered a core part of the Onondaga Lake Superfund site and any remediation done at that site should be considered part of the federal action. Based on the information available to the Nation at this time, Crouse Hinds Landfill may fall outside the scope of the Onondaga Lake remedial action.

2. Factual Background

Onondaga Lake was placed on the National Priorities List on December 16, 1994. 59

Fed. Reg. 65206. To reach this decision, EPA relied on a Hazard Ranking System scoring package, which evaluated the dangers posed by hazardous releases from two industrial facilities and several disposal sites for wastes from these facilities. The HRS scoring package specific evaluated the Willis Avenue Plant, the LCP Bridge Street Plant, the Semet Residue Ponds and Solvay Waste Beds 9 through 15. All of these facilities were operated by or received wastes from Allied Signal or the Solvay Process Company.

The Mathews Avenue Landfill site incorporates a 20-acre parcel used by Allied Signal and the Solvay Process Company (Fact Sheet for Mathews Avenue Landfill, Atlantic States Legal Foundation, www.aslf.org/onondagalake/Sitedescription). Process wastes and construction and demolition debris generated by Allied Signal and the Solvay Process Company were deposited at this Landfill. The facilities within the original HRS scoring package, including the Willis Avenue Plant, the LCP Bridge Street Plant, and the Solvay Waste Beds, were tied to Allied Signal and/or the Solvay Process Company. Contaminated wastes from these facilities have "come to be located" in the Mathews Avenue. Thus, by the terms of the HRS package, this subsite should be considered part of Onondaga Lake Superfund site and it should be remediated as part of that federal action.

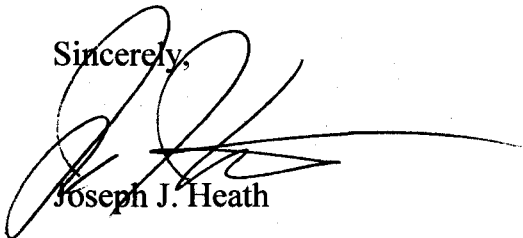
Crouse Hinds Landfill, on the other hand, appears to have accepted wastes only from the Crouse Hinds facility. This facility was not part of the original HRS package and the facility itself does not appear to have been a direct source of contamination to the Lake. Thus, the Landfill is not a site where contamination from sources within the Onondaga Lake Superfund site has come to be located.

The EPA has taken the position that the Crouse Hinds Landfill does not contribute contamination to Onondaga Lake, based on an assessment of contaminants present upstream and downstream from the site. However, there is an unobstructed groundwater to surface water pathway from the site to Ley Creek, which is a tributary of Onondaga Lake. Given this obvious and unobstructed pathway for contaminant transfer, the Nation believes that a more thorough assessment of the contaminants downstream of the Landfill is necessary to justify the EPA's conclusion regarding the Landfill's impacts on the Lake. Better methods, such as contaminant finger-printing or congener analysis, are available and should be employed before the EPA decides to remove Crouse Hinds Landfill from remediation under federal authority. However, if this more refined analysis supports the EPA's conclusion that Crouse

Hinds Landfill does contribute contaminants to the Lake, the Nation will not object to EPA's determination not to take federal Superfund action at this site.

In conclusion, the Nation objects to EPA's determination not to take federal Superfund action at the Mathews Avenue Landfill site, because the evidence suggests that contamination from the original Superfund site has come to be located there. Without stronger evidentiary support for the position that Crouse Hinds Landfill is not a source of contamination to the Lake, the Nation objects to the determination with respect to Crouse Hinds Landfill as well. If EPA can provide the type of technical support described above, the Nation will review the determination that remedial action at the Crouse Hinds Landfill falls outside the scope of the Onondaga Lake Superfund Site.

Sincerely,

A handwritten signature in black ink, appearing to be "Joseph J. Heath", with a long horizontal flourish extending to the right.

cc: Onondaga Nation Council of Chiefs